

Wednesday, June 8, 2005

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, and Ms. Yee present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

SALES AND USE TAX APPEALS HEARINGS

Jahangir Toughian and Leon Leontin Salajan, 219434

10-1-98 to 8-31-02, \$90,577.56 Tax, \$00.00 Negligence Penalty

For Petitioner:

Walter Babiuk, CPA

Leon Salajan, Taxpayer

Jahangir Toughian, Taxpayer

For Sales and Use Tax Department:

Stephen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the unreported taxable sales established from missing Report of Sales slips are overstated.

Whether petitioners have provided sufficient evidence to establish that they are entitled to claimed exempt sales in interstate or foreign commerce.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be submitted for decision.

M.D. Hydraulics, Inc., 249461

7-1-99 to 6-30-03, \$55,401.42 Tax, \$5,540.13 Failure to File Penalty

For Petitioner:

Michael Nicholas, Taxpayer

George Bill, Witness

Jeff Rose, CPA

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has presented evidence to support any adjustments to the audited measure of tax due.

Whether petitioner may be relieved of the penalty for failure to file a return.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be submitted for decision.

So Cal Ship Services, 219710

8-28-01, \$64,000.00 Tax, \$6,400.00 Penalty

For Petitioner:

Marc Paul Jacobs, Attorney

For Sales and Use Tax Department:

Stephen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that the vessel was not purchased for use in California.

Whether petitioner has established grounds for abating the failure-to-file penalty.

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Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be submitted for decision.

Stanley Gene Lorentzen, 89000966070, 89000966080

1-1-93 to 2-14-97, \$13,445.53 Tax, \$00.00 Failure to File Penalty

For Petitioner: Stanley G. "Randy" Lorentzen, Taxpayer

For Sales and Use Tax Department: Susan Wengel, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the evidence shows that the sales to International Market Consultants were nontaxable sales for resale.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be submitted for decision, granting the Department 30 days to respond to documents provided at the hearing and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

Andrew Levine, 245070

6-21-99, \$13,183.50 Tax, \$1,318.35 Failure to File Penalty

For Petitioner: Andrew Levine, Taxpayer

Ronald Jason Palmieri, Attorney

Philip Colavito

For Petitioner: Philip Colavito, Taxpayer

Carol Newman, Attorney

For Sales and Use Tax Department: Susan Wengel, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioners, or either of them, are liable for use tax on their purchase on June 21, 1999, of the vessel renamed "ESCADA," for use in California.

Whether petitioners have established grounds for abating the failure-to-file penalty.

Action: Upon motion of Ms. Mandel seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be submitted for decision.

Tha Chan Yin, 224879

1-1-99 to 7-31-02, \$10,664.65 Tax, \$1,077.19 Negligence Penalty

For Petitioner: Tha Yin, Taxpayer

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the markup and merchandise purchase ratios from the prior audit should be used in this audit, and whether adjustments to this audit are warranted for additional pilferage, sales for resale, food stamp sales, merchandise transferred to another business, and sales of phone cards.

Whether the 10 percent penalty for negligence is applicable.

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Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be submitted for decision.

Joe Singh Sandhu, 186293, 169564

4-1-94 to 3-31-99, \$179,701.50 Tax, \$44,925.46 Fraud Penalty, \$12,970.15 Finality Penalty

For Petitioner: Joe Sandhu, Taxpayer

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audited understatement of taxable sales is excessive.

Whether taxpayer committed fraud.

Whether relief from the finality penalty is warranted.

Action: The Board postponed this matter to the next Board meeting.

SPECIAL TAXES APPEALS HEARING

John Tirta, 160738

1-1-99 to 3-20-00, \$15,586.66 Tax

For Petitioner: John Tirta, Taxpayer

For Property and Special Taxes Department: Stephen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner has established that certain cigarettes were destroyed.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be submitted for decision.

The Board recessed at 11:45 a.m. and reconvened at 11:48 a.m. with Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel present.

SALES AND USE TAX APPEALS HEARINGS

Inter Export Trading Corporation, 149794

1-1-93 to 12-31-98, \$31,438.13 Tax, \$00.00 Failure to File Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Susan Wengel, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is liable as a successor within the meaning of Revenue and Taxation Code sections 6811 and 6812.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Wednesday, June 8, 2005

Kevin Michael Mehegan and Lorraine Mehegan (deceased), 249876

1-1-98 to 2-23-00, \$18,012.65 Tax, \$1,801.27 Negligence Penalty, \$1,668.12 Finality Penalty

Kevin Michael Mehegan, 249874

2-24-00 to 12-31-00, \$7,691.25 Tax, \$769.12 Negligence Penalty, \$769.13 Finality Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether the observation tests conducted during the audit are representative of the sales that occurred throughout the audit periods.

Whether the 10 percent penalties for negligence are applicable.

Whether the statute of limitations for the year of 1998 expired prior to the mailing of the Notice of Determination for the seller's permit associated with Case ID: 249876.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD JUNE 8, 2005

Jahangir Toughian and Leon Leontin Salajan, 219434

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

M.D. Hydraulics, Inc., 249461

Final Action: Mr. Parrish moved that the penalty be deleted, otherwise redetermine as recommended by the Appeals Division. The motion failed for lack of a second.

Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish abstaining, Mr. Leonard absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

So Cal Ship Services, 219710

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Andrew Levine, 245070

Philip Colavito

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Wednesday, June 8, 2005

Tha Chan Yin, 224879

Final Action: Upon motion of Mr. Parrish, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the allowance for pilferage be increased to 3 percent, otherwise redetermine as recommended by the Appeals Division.

Mr. Parrish requested the Appeals Division's Board hearing summaries for cases previously before the Board specify whether the case was an oral hearing or a nonappearance matter.

SALES AND USE TAX APPEALS HEARINGS

Craig Fleming Wendell and Colleen Sue Wendell, 252309

1-25-02, \$11,404.00 Tax

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Stephen Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issue: Whether petitioners owe use tax because the recreational vehicle was purchased for use in California.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

TM America, LLC, 220124

7-1-99 to 7-20-02, \$72,334.47 Tax, \$18,083.65 Fraud Penalty, \$828.74 Failure to File Penalty

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Sales and Use Tax Department properly determined that taxable sales were understated by \$885,301.00.

Whether the Sales and Use Tax Department has met its burden of proof with respect to the imposition of the fraud penalty.

Whether reasonable cause exists to abate the penalty for failure to file returns.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

FINAL ACTION ON SPECIAL TAXES APPEALS HEARING HELD JUNE 8, 2005

John Tirta, 160738

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard absent, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

2005 MINUTES OF THE STATE BOARD OF EQUALIZATION

Wednesday, June 8, 2005

The Board adjourned at 11:55 a.m.

The foregoing minutes are adopted by the Board on August 31, 2005.